

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEROME DAROYA,

Plaintiff,

v.

MARY JOSEPHINE DAROYA-
LUSHINA; and DOMINICK
RAMOS,

Defendants.

CV 22-02695-RSWL-JCx

**ORDER re: Defendants'
Motion to Dismiss [23]**

Plaintiff Jerome Daroya ("Plaintiff") initiated this Action [1] on April 22, 2022, against Defendants Mary Josephine Daroya-Lushina and Dominick Ramos (collectively, "Defendants"). Plaintiff brings a claim against Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), along with state law claims for conversion, breach of fiduciary duty, intentional interference with prospective economic advantage, constructive trust, and

violation of the California Business and Professions Code. Currently before the Court is Defendants' Motion to Dismiss and Motion to Strike ("Motion") [23], made pursuant to Rules 12(b)(1), (6), and 12(f) of the Federal Rules of Civil Procedure.¹

Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Defendants' Motion to Strike the new plaintiffs and claims added in the SAC and **GRANTS** Defendant's Motion to Dismiss as to Plaintiff's RICO claim **without leave to amend**. Because the only federal claim is subject to dismissal, the Court declines to address the merits of Plaintiff's state law causes of action.

I. BACKGROUND

A. Factual Background

Plaintiff Daroya alleges the following in his Second Amended Complaint ("SAC"):

Upon the death of their father, Plaintiff Daroya and Defendant Mary Daroya-Lushina ("Daroya-Lushina")

¹ Plaintiffs argue that Defendant violated Rule 7-3 because "Defendants' counsel did not even attempt to meet and confer with Plaintiffs' counsel until October 6, 2022" Plfs.' Opp'n to Defs' Mot. to Dismiss Plfs' Second Am. Compl. ("Opp'n") 6:21-23, ECF No. 26. Regardless of whether this constituted a violation of Rule 7-3, Plaintiffs were clearly not prejudiced because they were able to fully respond to Defendants' Motion. See generally Opp'n. Thus, the Court exercises its discretion to consider the Motion's merits. See CarMax Auto Superstores Cal. LLC v. Hernandez, 94 F. Supp. 3d 1078, 1088 (C.D. Cal. 2015).

1 inherited a property located at 21610 South Perry
2 Street, Unit 15 in Carson, California ("the Property").
3 SAC ¶ 16, ECF No. 20. On or about September 30, 2020,
4 Plaintiff Daroya and Defendant Daroya-Lushina created a
5 limited liability company known as Cookie and Kuya
6 Enterprises, LLC ("CKE"), to hold their joint interest
7 in the Property. Id. ¶¶ 16-17. Plaintiff Daroya and
8 Defendant Daroya-Lushina each owned a 50% membership
9 interest in CKE. Id. ¶ 17.

10 In 2021, Defendants jointly undertook a fraudulent
11 scheme to deprive Plaintiff Daroya of his interest in
12 CKE, to sell the Property, and to divert the proceeds
13 from the sale to themselves and away from Plaintiff.
14 Id. ¶ 21. On September 23, 2021, Ramos electronically
15 filed a fraudulent Statement of Information with the
16 California Secretary of State. Id. ¶ 23. This
17 Statement of Information contained numerous falsehoods,
18 including an altered mailing address for CKE and a
19 statement that Defendant Daroya-Lushina was its sole
20 manager. Id.

21 Around the same time, Defendants contacted
22 Opendoor, a company that makes cash offers for
23 properties. Id. ¶¶ 25-26. Defendants submitted
24 fraudulent documents to Opendoor, including a copy of
25 CKE's Operating Agreement showing that Plaintiff Daroya
26 had a 5% ownership interest in CKE rather than his
27 actual 50% ownership interest. Id. ¶¶ 27-28.
28 Defendants submitted further documentation suggesting

1 that Plaintiff Daroya had surrendered all interest in
2 CKE. Id. Defendant Daroya-Lushina proceeded to sell
3 the Property to Opendoor for \$496,000 and did not
4 provide any share of the proceeds to Plaintiff. Id.
5 ¶¶ 30-31.

6 Additionally, Defendant Daroya-Lushina falsely
7 identified herself as the sole officer and director of
8 Jose K. Daroya, CPA APC ("APC"), a company created by
9 their father prior to his passing. Id. ¶¶ 34.

10 Defendants allegedly obtained at least \$16,879 through a
11 Paycheck Protection Program loan and \$86,000 in Economic
12 Injury Disaster Loans on behalf of APC. Id. ¶ 33.

13 Lenders are now seeking to collect payments for these
14 loans from Plaintiff Daroya and his associated
15 businesses. Id. ¶ 34. Defendants also attempted to
16 fraudulently obtain a loan in the name of one of
17 Plaintiff Daroya's business clients, causing the client
18 to terminate his business relationship with Plaintiff.
19 Id. ¶ 35.

20 Lastly, Defendant Daroya-Lushina falsely identified
21 herself as the sole director and officer of JLA, a
22 financial services firm owned by several shareholders,
23 including Plaintiff Daroya and Defendant Daroya-Lushina.
24 Id. ¶¶ 14, 36. Defendant Daroya-Lushina also changed
25 JLA's mailing address to her own address, and received
26 checks made payable to JLA. Id. ¶¶ 36-38. Defendants
27 then forged endorsements on these checks and deposited
28 them into their own accounts. Id. ¶ 38. Plaintiff

1 Daroya discovered that Defendants accessed JLA's website
2 through the electronic submission of false information,
3 changed the name of JLA's website, and changed access
4 passwords to prevent Plaintiff Daroya and others from
5 accessing the site. Id. ¶ 39.

6 **B. Procedural Background**

7 Plaintiff Daroya filed his Complaint [1] on
8 April 22, 2022, and filed his FAC [12] on June 20, 2022.
9 Defendants filed a Motion to Dismiss [13] on July 11,
10 2022, which this Court granted [19] with leave to amend
11 on August 16, 2022. Plaintiff then filed his SAC [20]
12 on September 16, 2022. Defendants filed the instant
13 Motion [23] on October 10, 2022. Plaintiff opposed [26]
14 the Motion on October 18, 2022, and Defendants replied
15 [27] on October 24, 2022.

16 **II. DISCUSSION**

17 **A. Legal Standard**

18 1. Rule 12(f) Motion to Strike

19 Rule 12(f) provides that a court may, by motion or
20 on its own initiative, "strike from a pleading an
21 insufficient defense or any redundant, immaterial,
22 impertinent, or scandalous matter." Fed. R. Civ. P.
23 12(f). "The function of a 12(f) motion to strike is to
24 avoid the expenditure of time and money that must arise
25 from litigating spurious issues by dispensing with those
26 issues prior to trial." Whittlestone, Inc. v. Handi-
27 Craft Co., 618 F.3d 970, 973 (9th Cir. 2010) (quoting
28 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir.

1 1993), rev'd on other grounds, 510 U.S. 517 (1994)).
2 "Motions to strike are generally disfavored." Leghorn
3 v. Wells Fargo Bank, N.A., 950 F. Supp. 2d 1093, 1122
4 (N.D. Cal. 2013) (citation omitted); see also Sapiro v.
5 Encompass Ins., 221 F.R.D. 513, 518 (N.D. Cal. 2004)
6 ("Courts have long disfavored Rule 12(f) motions,
7 granting them only when necessary to discourage parties
8 from making completely tendentious or spurious
9 allegations.").

10 "In ruling on a motion to strike under Rule 12(f),
11 the court must view the pleading in the light most
12 favorable to the nonmoving party." Cholakyan v.
13 Mercedes-Benz USA, LLC, 796 F. Supp. 2d 1220, 1245 (C.D.
14 Cal. 2011). "[B]efore granting such a motion . . . ,
15 the court must be satisfied that there are no questions
16 of fact, that the [claim or] defense is insufficient as
17 a matter of law, and that under no circumstance could
18 [it] succeed." Id. (citing Tristar Pictures, Inc. v.
19 Del Taco, Inc., No. CV 99-07655 DDP(Ex), 1999 WL
20 33260839, at *1 (C.D. Cal. Aug. 31, 1999)). "[C]ourts
21 frequently require the moving party to demonstrate
22 prejudice before granting the requested relief, and
23 ultimately whether to grant a motion to strike falls on
24 the sound discretion of the district court." Cook v.
25 County of Los Angeles, No. CV 19-2417 JVS (KLSx), 2021
26 WL 1502704, at *2 (C.D. Cal. Mar. 31, 2021) (internal
27 quotation marks and citation omitted).

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1 2. Rule 12(b)(6) Motion to Dismiss

2 Rule 12(b)(6) of the Federal Rules of Civil
3 Procedure allows a party to move for dismissal of one or
4 more claims if the pleading fails to state a claim upon
5 which relief can be granted. Fed. R. Civ. P. 12(b)(6).
6 A complaint must "contain sufficient factual matter,
7 accepted as true, to 'state a claim to relief that is
8 plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.
9 662, 678 (2009) (citation omitted). Dismissal is
10 warranted for "lack of a cognizable legal theory or the
11 absence of sufficient facts alleged under a cognizable
12 legal theory." Balistreri v. Pacifica Police Dep't, 901
13 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

14 In ruling on a 12(b)(6) motion, a court may
15 generally consider only allegations contained in the
16 pleadings, exhibits attached to the complaint, and
17 matters properly subject to judicial notice. Swartz v.
18 KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). A court
19 must presume that all material allegations in the
20 complaint are true and construe them in the light most
21 favorable to the plaintiff. Klarfeld v. United States,
22 944 F.2d 583, 585 (9th Cir. 1991). While a complaint
23 need not contain detailed factual allegations, a
24 plaintiff must provide more than "labels and
25 conclusions" or "a formulaic recitation of the elements
26 of a cause of action." Bell Atl. Corp. v. Twombly, 550
27 U.S. 544, 555 (2007). The question is not whether the
28 plaintiff will ultimately prevail, but whether the

1 plaintiff is entitled to present evidence to support the
2 claims. Jackson v. Birmingham Bd. of Educ., 544 U.S.
3 167, 184 (2005) (quoting Scheuer v. Rhodes, 416 U.S.
4 232, 236 (1974)).

5 3. Rule 12(b)(1) Motion to Dismiss

6 Rule 12(b)(1) of the Federal Rules of Civil
7 Procedure allows a litigant to seek dismissal of an
8 action for lack of subject matter jurisdiction. Under
9 28 U.S.C. § 1367, a court has supplemental jurisdiction
10 over all claims that form part of the same case or
11 controversy as claims over which the court has original
12 jurisdiction. However, a district court may decline to
13 exercise supplemental jurisdiction over a state law
14 claim when all claims over which it has original
15 jurisdiction have been dismissed. 28 U.S.C.
16 § 1367(c)(3). This decision should be informed by the
17 values of economy, convenience, fairness, and comity.
18 United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726
19 (1996).

20 **B. Analysis**

21 1. Motion to Strike

22 The Court granted Defendants' previous motion to
23 dismiss with leave to amend, and Plaintiff Daroya
24 submitted a Second Amended Complaint ("SAC") shortly
25 thereafter. Plaintiff amended his Complaint to alter
26 the preexisting claims and to add three new plaintiffs,
27 a RICO conspiracy claim, two more conversion claims, and
28 an interference with prospective economic advantage

1 claim. See generally SAC. Defendants argue that these
2 new parties and allegations are "outside the scope of
3 the Court's Order and an impermissible attempt to change
4 factual allegations without leave of Court as required
5 under Rule 15." Mem. of P. & A. in Supp. of Defs.' Mot.
6 to Dismiss and to Strike ("Mem."), 4:3-9, ECF No. 23-1.
7 In response, Plaintiff Daroya argues that adding
8 additional plaintiffs cured the deficient RICO claim,
9 and thus falls within the scope of the Court's August
10 16, 2022 Order. Opp'n 7:13-8:12. Nonetheless,
11 Plaintiffs concede that, "[a]dmittedly, Plaintiffs
12 should have filed a motion requesting leave from the
13 Court to add additional claims," but contend that their
14 failure to request leave "was harmless and should not
15 lead to dismiss of the claims." Id. 8:9-12.

16 Federal Rule of Civil Procedure 15(a)(1) provides
17 that a party may amend its pleading once as a matter of
18 course within "(A) [twenty-one] days after serving it,
19 or (B) if the pleading is one to which a responsive
20 pleading is required, [twenty-one] days after service of
21 a responsive pleading or [twenty-one] days after service
22 of a motion under Rule 12(b), (e), or (f), whichever is
23 earlier." Plaintiff filed his initial Complaint in
24 April 2022, and more than twenty-one days have passed
25 since Plaintiff served Defendants in May 2022. See
26 generally Compl., ECF No 1; Proof of Service Upon Def.
27 Mary Josephine Daroya-Lushina, ECF No. 9; Proof of
28 Service Upon Def. Dominick Ramos, ECF No. 10. Plaintiff

1 then filed a First Amended Complaint in June 2022,
2 before Defendants filed their initial Motion to Dismiss
3 in July 2022. See generally First Am. Compl., ECF
4 No. 12; Defs.' Mot. to Dismiss Pl.'s First Am. Compl.,
5 ECF No. 13. Since Plaintiff has already amended his
6 Complaint once as a matter of course, he requires leave
7 of this Court for further amendments.

8 In Wehlage v. EmpRes Healthcare Incorporated, the
9 court granted the defendants' initial motion to dismiss
10 with leave to amend, directing the plaintiff to only
11 "add alter ego allegations" to one specific claim to
12 show she had standing. 821 F. Supp. 2d 1122, 1125
13 (N.D. Cal. 2011). The plaintiff proceeded to amend her
14 complaint to add new plaintiffs and defendants. Id.
15 There, the court held that the plaintiff, who could no
16 longer amend as a matter of course under Rule 15, had
17 exceeded the scope of the court's order. Id.
18 Accordingly, the court granted the defendants' motion to
19 strike the added parties and claims. Id.

20 Similarly, in Gerritson v. Warner Brothers
21 Entertainment Incorporated, the court dismissed the
22 plaintiff's claim with leave to amend to remedy
23 specified deficiencies in her preexisting claims.
24 116 F. Supp. 3d 1104, 1110-19, 1123-25 (C.D. Cal. 2015).
25 The plaintiff thereafter amended her complaint to
26 include new claims, which the court dismissed as
27 exceeding the scope of its order. Id. at 1124-25; see,
28 e.g., DeLeon v. Wells Fargo Bank, N.A., No. 10-CV-01390-

1 LHK, 2010 WL 4285006, *3 (N.D. Cal. Oct. 22, 2010) ("In
2 cases like this one . . . where leave to amend is given
3 to cure deficiencies in certain specified claims, courts
4 have agreed that new claims alleged for the first time
5 in the amended pleading should be dismissed or
6 stricken"); Kennedy v. Full Tilt Poker, No. CV 09-07964
7 MMM (AGRx), 2010 WL 3984749, *1 (C.D. Cal. Oct. 12,
8 2010) (noting that the court had stricken a third
9 amended complaint because plaintiffs' new claims and the
10 addition of new defendants "exceeded the authorization
11 to amend the court granted" and plaintiffs had not
12 sought leave to add new claims or defendants as required
13 by Rule 15).

14 In its August 16, 2022 Order, the Court granted
15 Plaintiff leave to amend his RICO claim and instructed
16 that Plaintiff "could allege new facts to cure the
17 deficiencies" in his RICO claim. See Order Granting
18 Defs.' Mot. to Dismiss Plf's First Am. Compl. ("Order")
19 12:19-13:7, ECF No. 19. Just as in Wehlage and
20 Gerritsen, Plaintiff was not granted leave to add new
21 parties and claims to his action and is attempting to
22 amend his Complaint without leave of the Court.
23 Plaintiff, however, contends that adding new plaintiffs
24 is tantamount to alleging new facts to cure his lack of
25 standing. Opp'n 7:13-8:12. But this interpretation of
26 the August 16, 2022 Order and the meaning of "allege new
27 facts," is too much of a stretch. Had the Court
28 intended to grant Plaintiff leave to add new parties,

1 the Court would have specified as such, rather than
2 directing Plaintiff to "allege new facts." Order 13:4-
3 6. Accordingly, Plaintiff's amendments exceed the scope
4 of the Court's August 16, 2022 Order and the Court
5 **GRANTS** Defendants' Motion to Strike the added plaintiffs
6 and claims. Plaintiff's new factual allegations
7 pertaining to his RICO claim are not stricken.

8 2. Motion to Dismiss – RICO Claim

9 The RICO statute makes it unlawful for any person
10 to conduct or participate in an enterprise's affairs
11 through a pattern of racketeering activity. 18 U.S.C. §
12 1962(c). To state a claim under RICO, Plaintiff must
13 allege facts establishing: "(1) conduct (2) of an
14 enterprise (3) through a pattern (4) of racketeering
15 activity (known as 'predicate acts') (5) causing injury
16 to plaintiff's 'business or property.'" Living Designs,
17 Inc. v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 361
18 (9th Cir. 2005) (quoting Grimmett v. Brown, 75 F.3d 506,
19 510 (9th Cir. 1996)).

20 Defendants argue that the Court must dismiss
21 Plaintiff's remaining RICO claim because the SAC fails
22 to allege: (1) the requisite predicate acts; (2) a
23 pattern of racketeering activity; (3) a pattern of
24 racketeering; and (4) an enterprise. See Mem. 6:11-
25 10:27. The Court finds that Plaintiff's RICO claim
26 fails because the SAC does not allege a cognizable RICO
27 injury that was proximately caused by a pattern of
28 predicate acts. The Court therefore **GRANTS** Defendant's

1 Motion as to Plaintiff's RICO cause of action.

2 a. Enterprise

3 An "enterprise" includes "any individual,
4 partnership, corporation, association, or other legal
5 entity, and any union or group of individuals associated
6 in fact although not a legal entity." 18 U.S.C.
7 § 1961(4). "Under RICO, two types of associations meet
8 the definition of enterprise: The first encompasses
9 organizations such as corporations and partnerships, and
10 other legal entities. The second covers any union or
11 group of individuals associated in fact although not a
12 legal entity." Shaw v. Nissan N. Am., Inc., 220 F.
13 Supp. 3d 1046, 1053 (C.D. Cal. 2016) (internal quotation
14 marks omitted) (quoting United States v. Turkette, 452
15 U.S. 576, 581-82 (1981)).

16 Here, Plaintiff argues that the SAC alleges three
17 theories of enterprises. See Opp'n 13:22-14:18, ECF
18 No. 26. First, it alleges that Daroya-Lushina and Ramos
19 acted through CKE, which the Court previously found to
20 be a sufficiently alleged enterprise. Id. at 14:10-12;
21 Order 7:22-8:7. Second, it alleges the existence of an
22 enterprise consisting of Defendant Daroya-Lushina,
23 Defendant Ramos, CKE, and JLA. Id. at 14:13-16. Third,
24 Plaintiff argues that in the alternative, two separate
25 enterprises existed consisting of Defendants and CKE,
26 and Defendants and JLA. Id. at 14:15-18. The Court
27 analyzes the allegations pertaining to each potential
28 enterprise in turn.

1 As before, with regard to Defendants' alleged
2 infiltration of CKE, the Court finds that Plaintiff has
3 adequately alleged the existence of an enterprise. A
4 RICO enterprise must be "an entity separate and apart
5 from the pattern of [racketeering] activity in which it
6 engages." Turkette, 452 U.S. at 583. The SAC describes
7 CKE as a legitimate LLC, which Defendants infiltrated
8 and conducted through a pattern of racketeering
9 activity. See SAC ¶ 17. CKE therefore existed
10 separately from the alleged racketeering activity for
11 which it was used, and thus constitutes a RICO
12 enterprise. See United Energy Owners Comm., Inc. v.
13 U.S. Energy Mgmt. Sys., Inc., 837 F.2d 356, 362-64 (9th
14 Cir. 1988).

15 Plaintiff's second argument that Defendant Daroya-
16 Lushina, Defendant Ramos, CKE, and JLA constitute an
17 enterprise is equivalent to alleging an association-in-
18 fact enterprise since Plaintiff does not contend that
19 these entities and individuals are a legal entity. And
20 Plaintiff's allegations of this association-in-fact
21 enterprise are insufficient.

22 An association-in-fact enterprise is "a group of
23 persons associated together for a common purpose of
24 engaging in a course of conduct." Turkette, 452 U.S.
25 at 583. The enterprise must have some sort of structure
26 or framework, meaning there must be "relationships among
27 those associated with the enterprise." Boyle v. United
28 States, 556 U.S. 938, 946 (2009). Here, the SAC does

1 not allege any relationship between CKE and JLA. While
2 Plaintiff alleges that Defendant Daroya-Lushina and
3 Defendant Ramos used both entities to commit
4 racketeering activity, the acts involving each entity
5 were completely unrelated to one another. The two
6 companies therefore had no common purpose, and they were
7 not associated together to form "a vehicle for the
8 commission of two or more predicate acts." See Odom v.
9 Microsoft Corp., 486 F.3d 541, 552 (9th Cir. 2007).
10 Plaintiff therefore fails to allege the existence of an
11 association-in-fact enterprise.

12 Finally, with regard to Defendants' alleged
13 infiltration of JLA, Plaintiff has adequately alleged
14 the existence of an enterprise. Just as with CKE, the
15 SAC described JLA as a legitimate corporation, which
16 Defendants infiltrated and conducted a pattern of
17 racketeering activity through. See SAC 14, 36-39. JLA
18 therefore existed separately from the alleged
19 racketeering activity for which it was used, and thus
20 constitutes a RICO enterprise. See United Energy Owners
21 Comm., Inc., 837 F.2d at 362-64.

22 Since Plaintiff has sufficiently alleged the
23 existence of enterprises through CKE and JLA only, the
24 Court analyzes the predicate acts discussed in the SAC
25 pertaining solely to CKE and JLA.

26 b. Injury Caused by Predicate Acts

27 A RICO claim requires a pattern of two or more
28 predicate acts that cause injury to the plaintiff's

1 business or property. Living Designs, 431 F.3d at 361.
2 A predicate act is "any act indictable under any of the
3 statutory provisions listed in 18 U.S.C. § 1961(1)." In
4 re Toyota Motor Corp., 785 F. Supp. 2d 883, 918
5 (C.D. Cal. 2011). Here, the predicate acts Plaintiff
6 alleges are mail fraud in violation of 18 U.S.C. § 1341
7 and wire fraud in violation of 18 U.S.C. § 1343. See
8 SAC ¶ 46.

9 i. CKE Enterprise

10 Plaintiff alleges that Defendants committed mail
11 and wire fraud through the CKE enterprise for
12 essentially two purposes. First, Ramos engaged in a
13 wire fraud to falsely identify Daroya-Lushina as the
14 sole manager of CKE. SAC ¶ 23. Second, Defendants
15 jointly engaged in mail or wire fraud to sell the
16 Property, which was CKE's main asset, and to collect the
17 proceeds of the sale for themselves. Id. ¶¶ 28, 30. In
18 turn, Plaintiff suffered two distinct injuries. The
19 first act of wire fraud deprived Plaintiff of his
20 rightful interest in CKE. Id. ¶ 21. The sale of the
21 Property deprived Plaintiff of his rightful share in the
22 proceeds of the sale. Id.

23 The Court previously noted that "[w]hile
24 Plaintiff's first injury – loss of membership interest
25 in CKE – may be a cognizable RICO injury, this harm
26 arose from a single act of wire fraud." Order 9:26-28.
27 Indeed, the single predicate act that Plaintiff alleged
28 in his First Amended Complaint was insufficient to

1 establish a pattern of racketeering activity. 18 U.S.C.
2 § 1961(5) ("[A] 'pattern of racketeering activity'
3 requires at least two acts of racketeering activity.").

4 Now, in his Second Amended Complaint, Plaintiff
5 states that while he "specifically identif[ies]
6 falsified documents and communications in a good faith
7 effort to comply with Rule 9(b)," Plaintiff currently
8 does not have in his "possession, custody and/or control
9 all of the relevant [e-mails], communications, and/or
10 false documents that [he] believe[s] were
11 circulated/transmitted by and between Defendants and
12 various third parties in furtherance of their fraudulent
13 scheme." SAC ¶ 22. Plaintiff remarks that, regardless,
14 he is informed and believes that Defendants were each
15 "responsible for sending multiple communications and
16 submitting multiple documents" to perpetuate their
17 fraudulent scheme, "but cannot identify with certainty
18 which was personally responsible for sending each such
19 communication or document until certain discovery is
20 permitted." Id.

21 Nonetheless, Plaintiff proceeds to plead that on or
22 about April 20, 2022, "Defendants filed an additional
23 false Statement of Information with the California
24 Secretary of State," which Plaintiff believes Defendants
25 submitted "electronically through the internet." Id. at
26 24. But it is unclear how this act causes Plaintiff
27 harm. By April 20, 2022, Defendants had already filed
28 an allegedly false Statement of Information with the

1 California Secretary of State that deprived Plaintiff of
2 his interest in CKE. See SAC ¶ 21, 23 (Explaining that
3 on September 23, 2021, Defendants caused a false
4 Statement of Interest to be filed, effectively depriving
5 Plaintiff of his interest in CKE). Thus, once again,
6 the merit of Plaintiff's RICO claim turns on whether
7 Plaintiff has alleged that Defendants' other predicate
8 acts – related to the sale of the Property – caused a
9 cognizable RICO injury.

10 The Court concludes that Plaintiff has not, and
11 Plaintiff's RICO claim therefore fails. Because this
12 conclusion is dispositive, the Court does not reach
13 Defendants' other arguments as to the merits of the RICO
14 claim.

15 To allege a cognizable RICO injury, Plaintiff must
16 show "a harm to a specific business or property
17 interest" that was caused directly by Defendants' RICO
18 violation. In re ZF-TRW Airbag Control Units Prods.
19 Liab. Litig., No. LA ML19-02905 JAK (FFMx), 2022 WL
20 522484, at *59-60 (C.D. Cal. Feb. 9, 2022) (citations
21 omitted). Here, Plaintiff alleges that Defendants' sale
22 of the Property deprived Plaintiff of his rightful share
23 in the sale's proceeds. SAC ¶ 21. Plaintiff argues
24 that because he has a 50% ownership interest in CKE, he
25 is entitled to at least 50% of the proceeds from the
26 sale of CKE's main asset. Opp'n 15:10-12.

27 As discussed in the August 16, 2022 Order, under
28 California law, "members of [an] LLC hold no direct

1 ownership interest in the company's assets." PacLink
2 Commc'ns Int'l, Inc. v. Superior Ct., 109 Cal. Rptr. 2d
3 436, 440 (Cal. Ct. App. 2001). Thus, "the members
4 cannot be directly injured when the company is
5 improperly deprived of those assets." Id. That
6 deprivation "constitutes an injury to the company
7 itself," and any action brought by an individual member
8 must be derivative in nature on the company's behalf.
9 Id. Here, Plaintiff's alleged deprivation of his fair
10 share of the proceeds is only incidental to the injury
11 caused to CKE itself. See PacLink, 109 Cal. Rptr. 2d at
12 441. Because the injury alleged in the SAC was one to
13 the LLC and not to Plaintiff directly, Plaintiff lacks
14 standing to assert it. See Sparling v. Hoffman Const.
15 Co., Inc., 864 F.2d 635, 640-41 (9th Cir. 1988)
16 (concluding that shareholder plaintiff lacked RICO
17 standing where RICO claims were based on injury to
18 corporation). While Plaintiff amended his Complaint to
19 include CKE and two other entities as plaintiffs,
20 perhaps in an attempt to establish standing, this Court
21 did not grant leave to add parties and has stricken the
22 added parties. Accordingly, Plaintiff still bears the
23 burden of pleading he has standing. Plaintiff has
24 therefore failed to assert a cognizable RICO injury
25 caused by the predicate acts committed by Defendants in
26 selling the Property.

27 ///

28 ///

1 ii. JLA Enterprise

2 Plaintiff fails to allege that Defendants used JLA
3 to commit predicate acts causing him injury. Plaintiff
4 contends that Defendants committed theft, fraud, wire
5 and/or mail fraud through JLA. SAC ¶ 46. To support
6 these claims, Plaintiff alleges that Defendants
7 electronically filed a false Statement of Information
8 with the California Secretary of State identifying
9 Daroya-Lushina as the sole director and officer of JLA
10 and altering JLA's mailing address. Id. ¶ 36.

11 Plaintiff contends that as a result, "at least several
12 checks made payable to JLA from JLA's clients" were
13 improperly forwarded to Defendants, at which time
14 Defendants forged endorsements on those checks and
15 deposited the funds into their own accounts. Id. ¶ 38.
16 Finally, Defendants allegedly changed the passwords to
17 JLA's websites and altered the sites through "the
18 electronic submission of false information." Id. ¶ 39.

19 Just as with CKE, any injury caused by these
20 activities was sustained by JLA, not by Plaintiff in his
21 personal capacity. See Sparling, 864 F.2d at 640-41.
22 Therefore, Plaintiff has failed to allege a pattern of
23 predicate acts causing him injury.

24 In sum, while Plaintiff may have properly alleged
25 the existence of enterprises and the requisite number of
26 predicate acts, Plaintiff has failed to allege that
27 those acts caused harm to Plaintiff's business or
28 property. Plaintiff therefore fails to state a civil

1 RICO claim.

2 3. Supplemental Jurisdiction

3 Defendants further request that the Court decline
4 to exercise supplemental jurisdiction over Plaintiff's
5 state law claims. Mot. 13:14-14:14. A district court
6 may decline to exercise supplemental jurisdiction over
7 state law claims where the court has dismissed all
8 claims over which it has original jurisdiction.

9 28 U.S.C. § 1367(c)(3). "[I]f the federal claims are
10 dismissed before trial . . . the state claims should be
11 dismissed as well." United Mine Workers of Am. v.
12 Gibbs, 383 U.S. 715, 726 (1966).

13 Here, Plaintiff's remaining causes of action are
14 state law claims within the Court's discretionary
15 supplemental jurisdiction. Because Plaintiff's federal
16 RICO conspiracy claim is stricken, and his federal RICO
17 claim is subject to dismissal, the Court declines to
18 address the Motion's arguments as to Plaintiff's state
19 law claims. Plaintiff failed to amend the FAC to
20 properly state a federal claim for relief, so the Court
21 dismisses the remaining state law claims. See Nguyen v.
22 Global Equip. Servs. & Mfg., Inc., No. 18-cv-01824-NC,
23 2018 WL 10758158, at *6 (N.D. Cal. Oct. 2, 2018).

24 4. Leave to Amend

25 "The court should give leave [to amend] freely when
26 justice so requires." Fed. R. Civ. P. 15(a)(2). "Rule
27 15's policy of favoring amendments to pleadings should
28 be applied with 'extreme liberality.'" United States v.

1 Webb, 655 F.2d 977, 979 (9th Cir. 1981). Against this
2 extremely liberal standard, the Court may consider "the
3 presence of any of four factors: bad faith, undue delay,
4 prejudice to the opposing party, and/or futility."
5 Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708,
6 712 (9th Cir. 2001).

7 Here, Plaintiff requests leave to amend to include
8 new claims or parties, or to cure the SAC's
9 deficiencies. See Opp'n 16:11-19. Plaintiff amended
10 his Complaint as a matter of course and the Court
11 already granted Plaintiff leave to amend his FAC to
12 state a cognizable RICO claim. Plaintiff has had
13 multiple opportunities to refine his claim, yet still
14 has not stated a plausible claim for relief. See Allen
15 v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir.
16 1990) ("The district court's discretion to deny leave to
17 amend is particularly broad where plaintiff has
18 previously amended the complaint."). The Court
19 therefore dismisses Plaintiff's RICO claim **without leave**
20 **to amend.**

21 III. CONCLUSION

22 Based on the foregoing, the Court **GRANTS**
23 Defendants' Motion to Strike the new plaintiffs and
24 claims added in the SAC and **GRANTS** Defendant's Motion to
25 Dismiss as to Plaintiff's RICO claim **without leave to**
26 **amend.**

27 Because the only federal claim is dismissed, the
28 Court declines to exercise supplemental jurisdiction

1 over Plaintiff's state law causes of action.
2 Accordingly, the Court does not address the merits of
3 Plaintiff's state law causes of action. Therefore,
4 there are no claims remaining and the Court closes this
5 case.

6
7 **IT IS SO ORDERED.**

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9 DATED: December 12, 2022

/S/ RONALD S.W. LEW

10 **HONORABLE RONALD S.W. LEW**
11 Senior U.S. District Judge
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